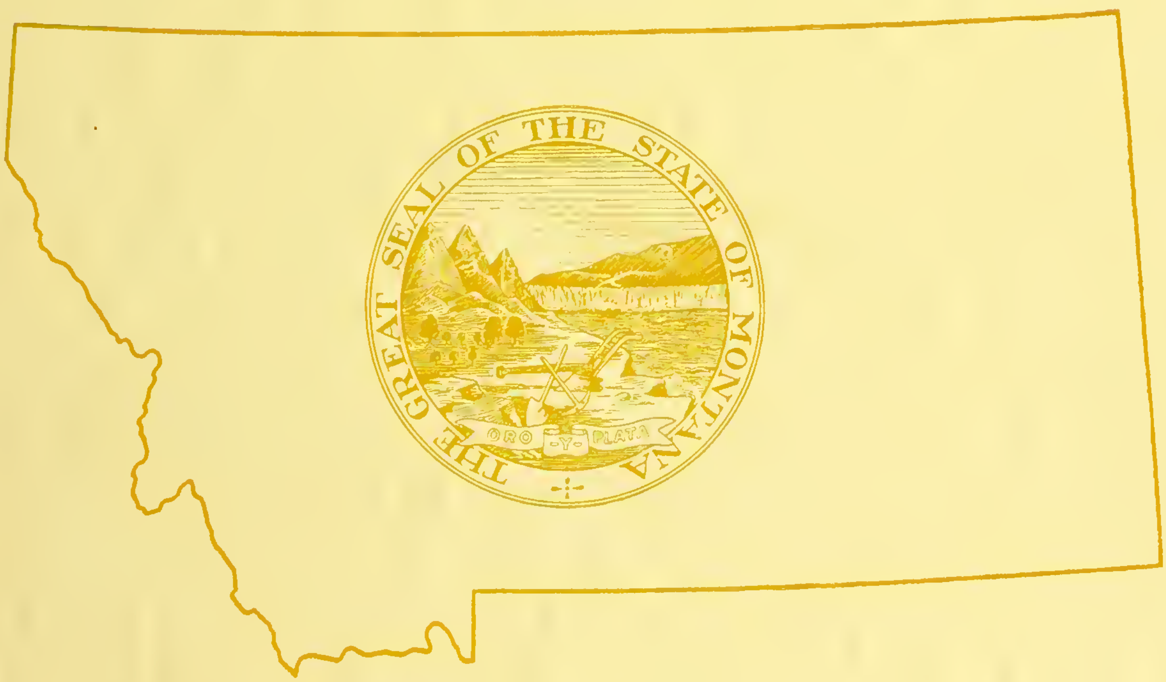
ADMINISTRATION OF THE STATE LIQUOR MONOPOLY



Montana Legislative Council

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Report No. 13

ADMINISTRATION OF THE STATE LIQUOR MONOPOLY

A REPORT TO THE THIRTY-NINTH
LEGISLATIVE ASSEMBLY

by the

Montana Legislative Council
November, 1964

McKEE PRINT

To Members of the Thirty-ninth Legislative Assembly:

Within the structure of Montana government, the Liquor Control Board is unique. It is the only agency of state government directly engaged in a business venture—the merchandising of liquor through state package stores. Moreover, the enterprise is a complete monopoly established by law.

To some persons any government activity is suspect. And, alcoholic beverages have connotations of evil to many. These attitudes, applied to a state business venture dealing with millions of dollars each year, make the Liquor Control Board a tempting target for rumors, accusations, and condemnation.

The major purpose of this report is to provide legislators and citizens of the state with factual information on the operation of the state liquor monopoly. The Council hopes that this information will promote a more thorough understanding of the operation of the monopoly, and that the report will thus be of benefit to legislators, citizens, and the Liquor Control Board alike.

Although a bill is not included in this report, legislation will be introduced to implement specific recommendations requiring statutory changes.

Very truly yours,

SENATOR W. A. "Bill" GROFF
Chairman
Montana Legislative Council

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1963-1964

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SUMMARY OF REPORT

Historical Development and General Administration

Following the repeal of prohibition, Montana established a state liquor monopoly to regulate the manufacture and sale of all alcoholic beverages manufactured, sold, or dispensed in the state. Control was accomplished through licensing power delegated to the Liquor Control Board. A retail monopoly was established—liquor was sold only by state package stores, and beer was sold only by the drink in licensed establishments.

Since 1933, when the system was established, only two major changes have been made in laws regulating the manufacture and sale of alcoholic beverages. In 1937 an appointive three-member board replaced the previous *ex-officio* State Board of Examiners. In 1938 a referendum allowing sale of liquor by the drink was approved by the voters and proclaimed by the Governor early in 1939.

The Liquor Control Board is charged with two major functions—control of the manufacture, sale, and consumption of alcoholic beverages; and merchandising liquor through state package liquor stores. The Board has very broad authority to regulate the manufacture, sale, and consumption of alcoholic beverages. Members are appointed by the Governor with the consent of the Senate for four year terms.

Under policy guidance of the Board, the liquor administrator is responsible for daily supervision of the monopoly. The administrative structure is divided into two program areas—merchandising, and licensing and law enforcement. The administrator supervises the merchandising program, and the assistant administrator supervises the licensing and law enforcement program. There are five functional divisions in the organization: merchandising, accounting, data processing, warehousing and licensing.

Licensing and Law Enforcement

The Board may suspend or revoke a license if any laws of the state or federal government, any municipal ordinance, or any regulation of the Board is violated. Suspensions or revocations may be based either on notice from a court that a licensee has been convicted of a violation, or upon facts ascertained by the Board itself. If the action is based upon a notice of conviction, it is mandatory that the Board suspend the license for up to ninety days or revoke it permanently. If the suspension or revocation is based upon information compiled by the Board, it acts in a quasi-judicial capacity determining the facts, deciding whether a violation occurred, and fixing the penalty.

As a result of statutory quotas, liquor and beer licenses subject to limitations have monetary value, retail liquor licenses being the more valuable. This value, which may range from a nominal amount to many thousands of dollars, is recognized by law, and licenses are subject to mortgages or other valid liens.

The Liquor Control Board and local law enforcement officials are jointly responsible for law enforcement. To reimburse local governments for enforcement expenses, a four percent tax on the retail selling price of liquor is collected and divided between counties and municipalities.

Under Montana law, every person who purchases liquor must have an annual permit issued by the Board costing fifty cents. Permits may be suspended by orders of interdiction issued by a court, or by the Board itself if liquor laws are violated.

THE ECONOMICS OF THE MONOPOLY

Since 1933 the state has received about $140 million in revenue from the monopoly. Because revenues are usually quoted in total figures, an erroneous impression is often created that the major source of revenue is from liquor profits. However, of total annual revenue of $8 million, liquor profits make up about 36 percent of the total, state excise taxes nearly 35 percent, beer licenses and taxes almost 14 percent, county license taxes almost 9 percent, and liquor license fees more than 6 percent. Statements that abolition of the monopoly would cost the state $8 million in revenue are misleading and untrue. Net profit from the operation of the monopoly is less than $3 million annually.

Personnel

General authority over personnel is delegated to the Board by statute but patronage is a major consideration in employment of Board personnel. In practice the administrator is named by the Governor, vendors are employed upon recommendation of the county central committee of the Governor's political party, and inspectors or auditors are employed upon the recommendation of the state central committee. Employees of the central warehouse and administrative offices in Helena, with the exception of the administrator, inspectors and auditors, are generally excluded from the patronage system. Employment is on a monthly basis with no tenure being accorded. Board members have not expressed dissatisfaction with the patronage system and there seem to be no compelling reasons to establish a separate merit system for Board employees.

Maximum annual salaries range from $3,750 for a subordinate employee of a Class C store to $9,000 for the liquor administrator. Board members favor removal of statutory salary limits. When these limits were first imposed, funds of the Board remained outside the appropriating authority of the legislature, and profits were not considered state funds until actually transferred to the state treasury. With almost no control over total salary expenditures, it is not surprising that the legislature imposed statutory salary limits.

Enhanced legislative control over salary expenditures since 1963 has negated the major reason for setting salaries by statute. Even when the maximum salary for a particular employee is set by statute, the total salary expenditure by an agency is not limited because there is no restriction on the number of employees. Stipulated statutory salaries also introduce a degree of inflexibility into administration of the monopoly which might be uneconomical to the state. The Council recommends removal of statutory salary limitations for Board employees.

Unless dismissed for mishandling funds or other serious reasons, employees involuntarily separated are given two weeks salary as severance pay. The practice of giving severance pay was explained by the Board as a means of getting rid of an employee "who isn't doing the job." In one instance, however, a retiring employee was paid for unused leave, received severance pay, and then was retained as an advisor for six months.

The Council recognizes that instances arise when it might be desirable to retain a retiring administrative official to provide continuity during the first month or two under a new administrator. If the Board feels that continuity in administration is necessary, it should, if possible, provide for training a subordinate staff employee. If this is not practical, retention of the retiring administrator for several weeks could be justified.

Severance pay to employees may be a common practice in private business and industry. The liquor monopoly is not a private business and should be operated as an agency of state government. If a separation has its origin in budgetary or other administrative changes, a minimum amount of foresight and planning will permit an orderly, normal notice and separation procedure. Because of circumstances surrounding this incident, it is difficult to escape the conclusion that the Board intended to provide a bonus for a long time employee.

The Liquor Control Board and its Policy-making Function

PURPOSE OF THE LIQUOR CONTROL ACT

The Liquor Control Board, and perhaps the legislative assembly and general public as well, seems to have a schismatic attitude toward the liquor monopoly. Income to the general fund is relished by legislator and taxpayer alike; but as one Board member put it, the product "has connotations of evil." One member stated that there is possibly a "conflict of interest" in the sale of liquor on the one hand, and the control function on the other. Some Board members apparently construe "control" to include regulating the *rate* of consumption of liquor although nothing in the statutes or cases suggests this as a purpose of the Board.

The merchandising policy of the Board is ambivalent. The Board established one attractive store to test public acceptance of modern merchandising techniques. Although they discovered that the new store increased sales of higher priced brands of liquor, a similar store was established in another city. A former Board chairman said that the Board definitely should not promote the sale of liquor; yet there is a policy of renovating state stores to make them more attractive. The equivocal position of the Board is perhaps best expressed in the statement of one member that "every once in a while we get off on the angle that maybe we should do a little merchandising and wonder whether or not it is a good thing." A major reason for the ambiguous position of the Board lies with its concept of "control."

A recent detailed study conducted by New York concluded that state laws and regulatory agencies have little if any effect upon the direct problems of alcohol or on the rate of consumption of alcoholic beverages. The conclusions and opinions of this report, if correct, might point toward a need to clarify the major functions of the Board. If the rate of consumption of alcoholic beverages cannot be controlled by statute and regulatory bodies, it should be frankly recognized. A clarification of the control function to include regulating only the manner in which alcoholic beverages are manufactured and sold within the state might aid the Board substantially in resloving any conflicts envisaged between its control and merchandising functions. This simplification, in turn, should expedite the formation of policy decisions and lead to more uniformity in the interpretation and application of liquor control laws. The Council suggests that the legislature recognize the dual function of the Board and perhaps redefine the purposes of the monopoly to better direct it.

ORGANIZATIONAL STRUCTURE

Although the liquor administrator supervises the entire operation, in practice most of his time is devoted to the merchandising program. The assistant administrator devotes almost all of his time to licensing and law enforcement. In effect, the monopoly has two administrators, and no single person exercises effective supervision over the entire operation. The division in administrative responsibility results in a lack of coordination and continuity —particularly in the merchandising program. An analysis of the Board's staffing pattern reveals a need for more high echelon employees.

GLACIER VIEW WINE

The purchase of dessert wine bottled specially for the Board under the name "Glacier View" during the period September 1958 through August 1962 generated criticism from both the general public and by legislative resolution Official minutes and correspondence of the Board give few clues as to the reason for the program.

To circumvent an alleged winery "price conspiracy," in 1958 the Board requested bids for a one year supply of dessert wine. When opened, the Board thought that all bids were so similar that they would each result in the same retail selling price — except for the bid submitted by Ellena Brothers of Etiwanda, California.

All bids were rejected, and the Board met with Mr. John Ellena. At the meeting, the Board agreed to waive the requirement that each bottle of liquor sold in the state carry the decalcomania attached at the winery. Mr. Ellena then agreed to lower his bid on the dessert wine.

Although Board members involved feel that marketing Glacier View wine was beneficial both to the state and to the public, the label was discontinued in August of 1962. Board members think the merchandising of Glacier View wine was profitable, but the additional net revenue cannot be ascertained since the effect upon total wine sales is not known. Moreover, the impact on sales of competing brands of wine has not been measured. In short, whether or not the program was profitable is a matter of opinion which has not been substantiated.

The Board has stated that it was interested in purchasing wine at the lowest possible price. Although the price of Glacier View wine increased substantially during the five year period when it was marketed, no calls for bids were issued after the initial advertisement. Official minutes of the Board give no indication why the Glacier View label was dropped, but members have attributed the discontinuation chiefly to adverse public reaction.

If the reasons given for marketing this wine are correct, a full and frank disclosure of the facts would have answered much of the criticism. Some Board members feel that the criticism was unjustified—as it may have been. However, the Board did not explain its action, and responsibility for not revealing the facts must lie with the Board.

Because liquor marketed cannot be controlled unless each unit has attached to it a serially numbered seal, the Council recommends that statutes be amended to require that a serially numbered seal of standard design be attached to each unit of liquor marketed in the state.

RECEIPT AND DISTRIBUTION OF MERCHANDISE

During the past five years, small quantities of wine vinegar, and cooking sherry have been included in carload shipments of wine from one California winery. These shipments are prepaid, and are picked up at the loading dock by a transfer and storage company which notifies a local brokerage firm. The arrangement was apparently made because of the belief that the state would benefit due to increased total weight of shipments and hence lower freight rates. The Council recommends that the practice of including wine vinegar, and cooking sherry in carload shipments be discontinued.

On at least one occasion, wine was withdrawn from the warehouse and furnished to a conference without collection of Montana markup or taxes. The law prohibits possession of any liquor within the state which has not been purchased from a state vendor with the exception that a person may bring into the state one wine gallon of liquor not purchased from a state store. It appears that persons attending the conference who were in possession of the liquor violated the law. A deliberate act of the Board, which is responsible for enforcing the liquor control act, permitted this violation.

In two other known instances wine was withdrawn by representatives of wineries because it was defective. The Board has no set policy regarding the disposition of defective merchandise withdrawn from sale. The Council suggests that the Board formulate a fixed written policy on the disposition of defective liquor withdrawn from the warehouse. Shipping defective merchandise directly back to distilleries would provide better control than delivery to distillery representatives in Helena.

Samples of liquor are given to the Board by distillery representatives. Most samples are received express prepaid consigned to distillery representatives. No official written records of the amount of samples received are maintained. If the Board feels that samples are necessary to their function, they should maintain a written record of such liquor received. The Council recommends that the law be amended requiring a written record of samples received, from whom supplied, and the final disposition of any such liquor.

GENERAL CONCLUSIONS

The Liquor Control Board has displayed some weakness in policy making. A major reason for this weakness appears to be the Board's preoccupation with aspects of the monopoly which are essentially administrative in nature. Concentrating on detailed aspects of the monopoly, the Board has often neglected its primary function — policy formulation. The Board is responsible for administration of the monopoly, but it should assert itself into administrative matters only to the extent necessary to insure that policies are effectively implemented.

There is a tendency for the Board to attempt to operate the monopoly much like a private business. Although a number of business principles are clearly applicable to the merchandising function, the monopoly is not a private business. It should be operated like the public agency it is with business procedures being applied as necessary to the successful merchandising of liquor.

During the past three fiscal years, the amount paid for counsel to the board suggests there is enough work to justify assignment of an assistant attorney general to the Board. Such an arrangement would create a desirable liaison between the law enforcement activities of the Board and the Attorney General's office, and would provide the necessary legal counsel from an attorney who would not have a vested interest in defending actions of the Board.

The efficiency of the management and operation of the monopoly is difficult to measure. During interviews with the Board, members repeatedly emphasized the large amount of revenue realized from the monopoly. However, whether operation of the monopoly in the past has been good, fair, or poor, is difficult to ascertain. This study did not entail a complete fiscal audit of the financial records of the monopoly. A periodic audit in greater depth than the examination of the State Examiner would be desirable.

INTRODUCTION

House Resolution No. 10 requested the Council to study the operations, personnel system, and administration of the liquor monopoly. However, a comprehensive study of each facet of the liquor monopoly was beyond the personnel and financial capabilities of the Council. In compliance with the directive, the Council therefore concentrated its efforts upon general aspects of administration, operations, and personnel policies of the Liquor Control Board. Less emphasis was placed upon licensing and law enforcement activities of the Board. The Council also selected several areas of special interest to the legislature and to citizens of the state for more detailed study. The air is rife with rumors regarding the operation of the liquor monopoly. When possible, the Council attempted to discover the factual basis, if any, of these rumors.

The main purpose of this report is to provide members of the legislature and citizens with factual information on the operation of the liquor monopoly. Much of the distrust and doubt regarding agencies, boards, and commissions of state government is based upon lack of knowledge of the complexities and application of laws. The Council hopes that this information will aid persons in understanding the operation of the liquor monopoly, and that the report will thus be of benefit to Montana citizens and to the Liquor Control Board alike.

Because the study was conducted during the 1963-1964 interim, most of the information is based on an historic period before the membership of the Board was increased from three to five members. In addition to three new board members, a new administrator was appointed in March of 1963. With these substantive changes, the administration of the monopoly in the future may be different from what it was prior to 1963.

On December 18, 1963 and February 19, 1964, the Council's liquor control subcommittee held joint meetings with the Liquor Control Board. A limited number of verbatim transcripts of these hearings are available to legislators on request to the Council office.

The Council expresses its appreciation to Board members for attending these lengthy meetings, and also to liquor administrator Crowell B. Shelton, former administrator John E. Manning, and other members of the Board's staff for their cooperation with the Council.

Chapter I

HISTORICAL DEVELOPMENT AND GENERAL ADMINISTRATION

Following the repeal of prohibition, the legislative assembly enacted Chapter 105, Laws of 1933, known as the "State Liquor Control Act of Montana." This law regulated the manufacture and sale of all liquor or alcoholic beverages manufactured, sold, or dispensed in the state. The State Board of Examiners, ex officio, was designated as the Montana Liquor Control Board. Control was accomplished through the Board's licensing power and the establishment of a retail monopoly. Liquor was sold only to holders of individual permits through state package liquor stores, and beer was dispensed by the drink only in establishments licensed by the Board.

Chapter 106, Laws of 1933, a companion measure entitled the "Montana Beer Act," further defined control over the manufacture and sale of beer. Each brewer or beer wholesaler was licensed. Procedures for issuing licenses for the sale of beer by the drink in private non-profit clubs, and also in restaurants or hotels if the beer were consumed with meals, were included in the Act.

Profits from the sale of liquor, taxes collected, and license fees from either Act, were divided, after deduction of administrative expenses, equally between the state general fund and the counties. The beer act specified that not more than fifteen percent of the money collected could be used for administration; no similar limitation was specified in the liquor control act.

Since enactment, laws regulating the manufacture and sale of liquor and beer have been amended during each legislative session. In only two instances, however, were major changes made. Chapter 30, Laws of 1937 created a new Liquor Control Board consisting of three members appointed by the Governor.

Chapter 84, Laws of 1937 authorized licenses for other than private clubs, and licenses for the sale of liquor by the drink. The law was placed on the ballot as a referendum, was approved by a vote of 113,000 to 69,000, and proclaimed by the Governor on January 21, 1939. Thus, the system of liquor control and sale, which has remained basically unchanged to the present time, was established.

The Liquor Control Board is charged with two major functions—control of the manufacture, sale, and consumption of alcoholic beverages within the state; and merchandising liquor through state package liquor stores. The Montana supreme court has said regarding the two major functions of the board:

> *. . . The purpose of the Act was to limit and regulate the manufacture and sale of intoxicating liquor, as disclosed by the title and as disclosed by the provisions of the Act itself. SUCH PROFIT AS MAY BE OBTAINED FROM THE CONDUCT OF THE STATE LIQUOR STORES IS INCIDENTAL TO THE MAIN PURPOSE OF THE ACT TO LIMIT AND REGULATE THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS. . .*[1] **(Emphasis supplied.)**

Although the major purpose of the law may have been to regulate and limit the manufacture and sale of intoxicating liquors, the revenues received from the sale of liquor, taxes, and licenses have long since ceased to be an "incidental" item. The approximately eight million dollars in annual revenue is of major interest to budgeting and appropriating officials of the state, and taxpayers alike.

[1] *State v. Driscoll*, 101 Mont. 348.

The law grants broad powers to the Board including the authority to import and sell liquor, set prices for retail package liquor sales, issue individual liquor permits, license retail liquor and beer dealers, license brewers and beer wholesalers, prohibit the sale of any preparation containing alcohol which could be used as an ingredient of a beverage, declare seized liquor contraband under certain conditions, suspend or cancel licenses, appoint inspectors to enforce the law, declare surplus revenue profit and transfer the amounts to the general fund, distribute a portion of taxes to local governments, hire and discharge employees and fix their compensation within the limits prescribed by law, and make any necessary rules and regulations.

The Liquor Control Board was increased from three to five members in 1963. Not more than three members may be of the same political party. They are appointed by the governor for four year terms, confirmed by the senate, and may be removed only for cause. The chairman is elected by the membership. Members are paid $20 per day plus expenses while engaged in their official duties. Maximum per diem may not exceed $1,500 per year excluding traveling expenses.

The Board, meeting regularly on the third Thursday and Friday of each month, closely supervises the administration of the monopoly. During the first morning of each meeting the Board acts upon applications for the granting and transferring of liquor and beer licenses. Factual information regarding the applications is supplied by the license department; applicants and persons wishing to protest the action are sometimes interviewed. The afternoon of the first day is usually devoted to considering law violations.

The second morning, and usually a substantial portion of the second afternoon, is devoted to interviewing distillery representatives. Each representative is allotted about fifteen minutes to discuss listing new brands, listing brands in different sizes, price changes, advertising campaigns, and other subjects relating to merchandising.

The remainder of the meeting is devoted to making decisions on license applications, distillery representatives' requests, and internal administrative matters. It is during this period that the Board determines store locations, establishes prices, brands and sizes of liquor to be carried in state stores, and takes care of administrative details such as employment of personnel and capital expenditures.

Under policy guidance of the Board, the liquor administrator is responsible for daily supervision of the monopoly. The monopoly has two program areas—merchandising, and licensing and law enforcement. The administrator supervises the merchandising program, and the assistant administrator supervises the licensing and law enforcement program under the general guidance of the administrator. The administrative organization has the following five functional divisions:

1. The merchandising division consists of a receptionist - secretary, inventory control clerk, traffic manager, purchasing agent, supply clerk, and the state liquor stores. The 112 regular state stores are staffed with 196 salaried employees; in addition there are 41 commission vendors.
2. The accounting division consists of a chief accountant, head bookkeeper, payroll clerk, cashier, bookkeeper, clerk, four field auditors and one maintenance engineer.
3. The data processing division consists of a supervisor, assistant supervisor, and 11 technicians.
4. The warehouse division consists of a superintendent, assistant superintendent, 3 clerks, 8 warehousemen, and 6 watchmen-janitors.
5. The license division, under the supervision of the assistant liquor administrator, consists of a license clerk and 10 field inspectors, for law enforcement and investigations of license applicants.[2]

[2] Organizational information from Liquor Control Board.

Chapter II

LICENSING AND LAW ENFORCEMENT

Liquor and Beer Licenses

RETAIL LIQUOR LICENSES

Chapter 84, Laws of 1937, which first authorized the issuance of retail liquor licenses, did not limit the number of licenses which could be issued. The law provided for an annual fee ranging from $200 to $600 for each license, based on population. In 1947 the first statutory limitation on the number of retail liquor licenses was imposed. The quotas only pertained to licenses situated within municipalities and within five miles of their corporate limits. The Board could issue licenses in other areas that would "serve the public convenience or necessity." Subsequent amendments allowed veterans' and fraternal organizations to obtain non-transferable and non-assignable retail liquor licenses even if statutory quotas were filled.

In 1963 the legislature lowered the license quotas, and for the first time established a quota (one license for each 750 persons in the county) for the area outside the five mile limit. Although the intent of the 1963 change was to reduce quotas, all licenses (except veteran and fraternal) presently issued can be transferred and the number will be reduced only if a license lapses or is revoked by the Board. The maximum number of licenses is as follows:

Municipal Population	Number of Licenses
1. 500 or less	2a
2. More than 500, less than 3,000	3 for first 1,000 inhabitants; plus 1 for each additional 1,000 inhabitants.
3. More than 3,000	5 for first 3,000 inhabitants; plus 1 for each additional 1,500 inhabitants.

a. Unchanged from previous limit.

Retail liquor licenses permit the licensee to sell by the bottle or by the drink. The licensee is not given any discount at state stores, however, and package sales must be priced in excess of that charged at the state stores if the dealer is to make a profit. The Board will not permit a retail licensee to sell package goods only, nor to sell package goods at less than the posted price in state stores.

BEER LICENSES

Beer containing less than 4.0 percent alcohol by weight is subject to control but may not be sold by the Board. Beer of more than 4.0 percent alcohol by weight may be sold only by the Board. Annual retail beer licenses cost $200; licenses for veterans' organizations cost $50. Each vehicle operated as a common carrier buffet or dining car must have an annual license costing $25, and special licenses may be issued to fair associations at $10 per day with a $25 minimum. Veterans' and fraternal organizations may also be granted special 24-hour licenses costing $5 for the on-premise sale of beer.

Like retail liquor licenses, on-premise beer license quotas are based upon population. The limitations are as follows:

Municipal Population	Number of Licenses
1. 500 or less	2 to be used with retail liquor licenses; plus 1 additional not to be used with a retail liquor license.
2. More than 500, less than 2,000	2 for the first 500 inhabitants and 1 for each additional 500 inhabitants to be used with retail liquor licenses; plus 1 additional license for each 500 inhabitants not to be used with a retail liquor license.
3. More than 2,000	5 for the first 2,000 inhabitants and 1 for each additional 1,000 inhabitants to be used with retail liquor licenses; plus 2 licenses for the first 2,000 inhabitants or major fraction thereof and 1 license for each additional 1,000 inhabitants not to be used with retail liquor licenses.

Veteran and fraternal organizations can receive on-premise licenses in addition to the specified quotas. The quota for retail on-premise beer licenses was not changed in 1963, and there is no limit for on-premise licenses outside municipalities or off-premise licenses.

Every brewer who sells beer in the state must also be licensed; the annual fee is $500. Each wholesaler is licensed for an annual fee of $400, and can maintain one sub-warehouse which is licensed for an additional $400 annual fee. There is no limit on the number of brewers' licenses. Wholesale beer licenses are limited to one for each thirty retail beer licenses.

Application and Transfer of Licenses

All new applications or requests for transfer of liquor or beer licenses must be approved by the Board. Upon receipt of the application and a transfer fee, the Board investigates the applicant and premises. Applications must state the names of all persons financially interested in the business, and the licensee is required to operate the premises. Published legal notice of intent to apply for a new license or transfer an existing license is required.

When an application for a new license or transfer of an existing license is received, the Board schedules a hearing at a regular monthly meeting. In some cases, the interested persons do not appear, there are no protests, and the application is approved. If there are questions regarding the application, the interested persons, their counsel, and persons opposing the application may appear before the Board.

Suspensions and Revocations

The Board may suspend or revoke a license if any laws of the state or federal government, any municipal ordinance, or any regulation of the Board is violated. Conducting a licensed premise in an unsanitary manner or in violation of rules or regulations of public authorities is also ground for suspension or revocation.

Suspensions or revocations may be based either upon notice from a court that a licensee has been convicted of a violation, or upon facts ascertained by the Board itself. If the action is based upon a notice of conviction, a hearing is scheduled to determine if there were miti-

gating circumstances and to obtain information upon which disciplinary action may be based. It is mandatory that the Board suspend the license for at least ninety days on notice of a conviction. Thus, in these cases the board is limited to determining the severity of the penalty.

The Board is also notified of alleged violations by complaints from liquor inspectors or other persons. When a complaint concerning a licensee is received, a hearing is scheduled. In these instances the Board determines the facts (whether or not a violation occurred), and also decides whether or not to impose a penalty.

Licenses as Property

Due to the statutory quotas, liquor and beer licenses subject to limitations have monetary value. The value may vary from a nominal amount to many thousands of dollars. Retail liquor licenses for some of the larger cities have been estimated to be worth as much as $15,000, and the value could be even higher depending upon the circumstances when a license is sold.

Section 4-410, R.C.M. 1947, recognizes the value of retail licenses and provides that they are subject to mortgages or other valid liens. Upon written request, and payment of a ten dollar fee, the name of the mortgagee or other lien holder is endorsed on the license. The Board will not transfer such licenses unless the mortgagee or lien holder has acknowledged the instrument of assignment. The lien may be removed upon written request and payment of a five dollar fee. Although not required to do so by statute, the Board requires satisfaction of any valid lien before approving a transfer.

Individual Permits

Under Montana law, every person who purchases liquor must have a permit issued by the Board. The annual fee is fifty cents. If a person violates liquor laws or regulations, the Board may, with or without a hearing, suspend or cancel the permit.

Individual permits are also suspended by orders of interdiction issued by a court. When an order of interdiction is filed with the Board, vendors, bar owners, and law enforcement personnel are notified. The interdiction is effective until set aside by the court. The Board has no discretion when an order of interdiction is received, its action being restricted to recording the court order and notifying the necessary persons.

In addition, the Board is authorized to issue special permits to druggists, physicians, dentists, veterinarians, and clergymen (for purchase of sacramental wine). Pharmaceutical alcohol is sold directly from the central warehouse in Helena.

Law Enforcement

The Liquor Control Board and local law enforcement officials are jointly responsible for enforcement of liquor laws. To reimburse local governments for enforcement expenses, Section 4-240, R.C.M. 1947, provides for a four percent tax on the retail selling price of liquor. One-fourth of the revenue is retained by the county, and three-fourths is divided among the municipalities in the county in proportion to gross liquor sales.

Under the supervision of the assistant administrator, nine field inspectors are assigned to geographic districts, and one examines all veteran and fraternal licensees. Inspectors check with local authorities on violations; report to the Board on the background and character of license applicants; inspect licensed premises to insure compliance with sanitary regulations; and enforce legal closing hours. Other duties may be assigned such as investigating complaints against licensees, or enforcing the prohibition against importation of more than the legal limit of liquor into the state.

Conclusions and Recommendations

INDIVIDUAL PERMITS

Individual permits were designed as a tool for law enforcement. During the period when liquor could only be purchased through state package stores, the individual permits probably aided in law enforcement. Authorization of liquor sales by the drink, however, greatly diminished the importance of individual permits as a law enforcement device. The requirement that each person display an individual permit before purchasing liquor in a retail establishment is now cumbersome, impractical, and universally ignored by retail licensees. Lack of compliance with the law regarding individual permits, to a degree, dilutes the effectiveness of all liquor laws.

The state realizes gross revenue of about $50,000 annually from sale of individual permits. Actual costs incurred in issuing permits, however, have not been ascertained by the Board.

Individual permits are also utilized in an effort to prevent interdicted persons from obtaining alcoholic beverages. Because the permits are not required for purchases from retail licensees generally (purchases may be by the drink or by the bottle), the effectiveness for interdiction is questionable.

Only four monopoly states other than Montana use individual permits. Three (Iowa, Oregon, and Utah) sell permits, and Pennsylvania issues permits at no charge. Idaho recently abolished individual permits, and a proposal to abolish individual permits has been considered by the Oregon legislature.

After studying the administration of the liquor monopoly in 1941, Griffenhagen and Associates stated:

> ***The issuance of permits was designed as a method of control over purchases, but it apparently has developed into nothing more significant than a revenue producing measure. The receipts from permit sales . . . equal . . . about one-half of one percent of the liquor sales. Since the permit does not serve the purpose for which it was intended, namely, control over purchases of liquor, it is recommended that it be discontinued. The loss of revenue could be more than made up by a mark-up of an additional one percent on the cost of liquor.***

The Council concludes that individual permits are no longer an effective tool of law enforcement, that financial implications of abolishing permits would be negligible, and that permits do not contribute significantly to preventing interdicted persons from obtaining alcoholic beverages. It seems illogical to charge the public for the privilege of purchasing merchandise from a state monopoly where prices are set by the Liquor Control Board. The Council recommends that individual permits be abolished.

LICENSES

Published notice of intent is required for new liquor licenses or for transfers of existing licenses. Notice must be published once a week for four consecutive weeks in a newspaper of general circulation in the city or county. Because the Board meets only once each month, this requirement could cause a two month lag between the application and approval. The requirement may not create a hardship if a new license is requested, but a long delay in transferring an existing license could impede a business transaction and create other legal complications. The Council concludes that published notice once a week for two consecutive weeks is adequate for license transfers, but that notice requirements for new licenses should not be changed. The Council recommends that liquor laws be amended to effect this change.

The Board has received applications from two firms which propose to process alcoholic beverages. One firm has requested a license to manufacture mixed drinks. The other firm has requested a license to import ingredients and manufacture vodka, gin, bourbon, and blended whiskey. The firm which proposes to manufacture mixed drinks will purchase materials from the Board, but the other firm will purchase materials from out-of-state suppliers. Both proposals have been the subject of recent district court decisions. Because the Board believes there is a conflict between the two court decisions, both will be appealed to the Supreme Court.

Although it would not be proper for the Council to comment upon the merits of cases pending before the Supreme Court, the Board should do everything possible within the framework of liquor laws to encourage new industry. One firm could employ about twenty persons in Helena initially, and, if the business prospers, employment might increase. Because new industry is desirable, the Council urges the Board to give serious consideration to proposals which will benefit the state economically without impairing the control exerted over the manufacture and sale of liquor.

Chapter III

OPERATION OF THE LIQUOR MONOPOLY

The State of Montana has been in the business of buying and selling liquor for more than 30 years. Whether the prime intent of the legislative assembly in establishing the system was to control and regulate the sale of liquor rather than profit from it, is academic. The monopoly is a multi-million dollar business enterprise producing a significant portion of state revenue, employing scores of people, and in one way or another affecting the lives of many residents of the state.

State Package Liquor Stores

Section 4-114, R.C.M. 1947 specifies that: "The board shall establish and maintain at the county seats and such other places as the board deems advisable, one or more stores to be known as 'State liquor stores' for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder. . ." The Board, therefore, has complete authority and discretion in the number and location of state liquor stores except that there must be a store in each county seat. The state has established 153 retail liquor stores which are classified by statute as follows:

Class A—stores with gross sales of $450,000 or more during the past fiscal year. Class A stores are located at Anaconda, two in Billings, Bozeman, two in Butte, two in Great Falls, Havre, Helena, Kalispell, and Missoula.

Class B—stores with gross sales of $140,000 to $450,000 during the past fiscal year. Class B store are located at Browning, Columbia Falls, Cut Bank, Deer Lodge, Dillon, Glasgow, Glendive, Hamilton, Hardin, Lewistown, Libby, Livingston, Miles City, Plentywood, Polson, Red Lodge, Shelby, Sidney, Walkerville, Whitefish, and Wolf Point.

Class C—stores with gross sales of less than $140,000 during the past fiscal year. If gross sales are $25,000 or less, a commission agency is established.

The Markup Formula

The Liquor Control Board has complete authority to set the markup formula for liquor and retail price in state package stores. Section 4-114, R.C.M. 1947, provides:

> . . . the board may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. . .

The only restriction on this authority is that there can be no reduction in price for purchases in quantity. For all domestic distilled spirits the Board employs a standard formula which includes the base cost, freight, federal taxes, markup percentage, and state and local taxes of twenty percent of net selling price.

The formula used for pricing domestic distilled spirits prior to July 1, 1963 differs from the new one in two important respects: (1) the markup in the old formula was applied to cost excluding the last three federal taxes; in the new formula all federal taxes are added to cost before applying markup, and (2) the markup percentage was changed from 53 percent in the old formula to 33 percent in the new formula.

The federal tax is based upon a "proof gallon." This term means a wine gallon of alcoholic mixture containing 50 percent (100 proof) alcohol by volume. Total federal taxes amount to $10.50 per proof gallon, but the Board segregates the last three taxes—amounting to $6.50 per proof gallon—because these were "temporary" taxes imposed during World War II.

Below is the computation of retail selling price, using the old and new formulas, for a given brand of 86 proof domestic distilled spirits, one-fifth gallon units.

	Old Formula	New Formula
Base cost per case	$14.60a	$28.02b
Freight cost	1.50	1.50
Case cost delivered	16.10	29.52
Bottle cost delivered	1.34c	2.46c
Markup @ 53 percent	.71d	.....
Last three federal taxes	1.12e	.....
Markup @ 33 percent	.....	.81f
Net cost per bottle	3.17	3.27
State and local taxes—20% of net selling price	.63	.65
Total	3.80	3.92
Retail (posted) price	3.80	3.95g

a. Exclusive of last three federal taxes.
b. Includes last three federal taxes.
c. Case cost delivered divided by twelve.
d. Markup of 53 percent of bottle cost delivered ($1.34).
e. Last three federal taxes of $13.42 per case divided by twelve.
f. Markup of 33 percent of net cost per bottle ($2.46).
g. Rounded up to next five cents.

A price change does not always result from using the new formula. For example, the retail price of 100 proof whiskey costing $39.29 per case would be $5.40 per one-fifth gallon unit under both the old and new formula.

Because the last three federal taxes are inserted at a different point in the new formula, and because the federal tax is based upon alcoholic content, the general effect of the change was to increase the prices on low proof liquors, leave some prices unchanged, and decrease prices on high proof liquors. After the formula was computed, the Board discovered the prices on many imported Scotch and Canadian whiskies would be decreased. The Board decided to retain the old formula for imported Scotch and Canadian whiskies, thinking this would improve the competitive position of domestic distilleries.

Wines are priced by a separate formula differing only in markup percentages. This formula was not changed on July 1, 1963. Wines having a base cost of less than $6.00 per case are subject to a markup of 75 percent. Wines costing more than $6.00 are subject to a 53 percent markup.

In addition, the Board has established "floor," or minimum, retail prices for distilled spirits. If the floor price for blended whiskey were set at $4.00 per one-fifth gallon unit, none would be sold at a lower retail price regardless of the price computed by the markup formula. The floor price on wine was discontinued at the time the Board decided to market Glacier View.

The Board's official statement explaining the July 1, 1963 price changes follows:

> Over the course of the past few years the Liquor Control Board has experienced a "profit squeeze" as a result of the same factors which have had this effect in many segments of private industry. Principal among these factors, of course, is the maintenance of fairly stable levels of prices in the face of ever-increasing operating costs. A number of months prior to the 1963 legislative session, it had become apparent to the board that

price adjustments would be necessary if the integrity of state revenues from the liquor department was to be maintained. The pricing formula that had been in use for a number of years was subjected to reconsideration and review and when the 1963 legislature convened a proposal for revising that formula as applied to domestic distilled spirits, viz., whiskey, gin, and vodka, was pending. . . In approving the salary bill, the Legislative Committee made clear to representatives of the liquor department that it did so with the understanding and expectation that (1) the revised pricing formula would be put into effect, and (2) there would be a reduction in personnel in certain state liquor stores felt by the Committee to be "overstaffed." Following the legislative session, price recomputations were made, price lists revised and republished and other necessary steps taken to the end that the new prices could be effectuated as of July 1, 1963, the opening date of the Board's current fiscal year. Attention was also promptly given to effecting reduction in the personnel of certain state stores.[1]

After adoption of the new formula, the former administrator stated that the price changes would bring in an additional $136.000 in annual revenue. This figure was apparently quoted to the House appropriations subcommittee during 1963, and the impression conveyed to the subcommittee that price increases, together with cost savings effected through such measures as personnel reduction, would offset proposed salary increases.

The Board estimates additional annual cost to the state will be $214,000 as a result of salary increases. Salary savings effected by personnel reductions will amount to $46,000 per year, and the net effect of the salary increases and personnel reductions will be increased annual salary costs of $168,000. If additional annual revenue from the price changes of July 1, 1963 amounts to $136,000 as estimated, additional cost savings of $32,000 per year will have to be realized if the Board is to comply with its pledge to the House subcommittee.

After a full year of experience with the revised prices, the Board has not evaluated its original estimate of income. The Board should estimate the effect of retail price changes, or at least periodically refine estimates as additional sales information becomes available.

Because federal taxes are included in the price to which the Montana markup and taxes are applied, the state in effect realizes a profit on federal taxes and also applies a tax to a tax. A portion of the revenue from the monopoly is, therefore, profit and tax on a federal tax.

The Board has complete discretion in determining the markup to be applied to liquor, but the mechanical computation should be as simple and uniform as possible. It is questionable whether the Board should make an exception to the general pricing formula for imported whiskies in an attempt to favor domestic distillers.

Purchasing

For items already stocked, purchasing policy is based largely upon past and anticipated future sales. The Board reviews sales information, and the staff recommends purchasing additional inventory. The Board then decides on brands and quantities to be ordered.

Brands are delisted chiefly due to decline in sales. Some Board members, however, apparently feel that some slow moving brands should be listed to insure a reasonable selection. The number of brands carried is larger in stores with higher sales volume.

Decisions on new listing, different container sizes for listed brands, and similar changes are based in part upon proved sales after a trial period, sales experience in other states, and

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[1] Correspondence, Mr. Crowell B. Shelton to Mr. Eugene C. Tidball, September 27, 1963.

the proposed supporting advertising program outlined by distillery representatives. The Board may order a limited quantity of a new brand, list the item in selected state stores, and decide whether or not to stock the brand based upon these sales.

During a 1963 national meeting of control state administrators, the matter of listing and delisting of brands was discussed. Most of the administrators from eight of the seventeen control states indicated new listings twice each year. Administrators from New Hampshire and Pennsylvania stated new listings usually were considered annually, and of this group of eight monopoly states, only Oregon followed the Montana practice of considering new listings monthly.[2]

Because Pennsylvania, the largest of the control states in population and annual sales volume, usually considers new listings only once each year and because many other large volume control states consider new listings only once or twice annually, the Montana Board probably should not be preoccupied with these decisions at each monthly meeting. As much as one-half of the Board's time at monthly meetings is taken up by interviews of distillery agents and decisions on purchasing. Perhaps the board should devote a regular meeting either annually or semi-annually to proposals of distillery representatives, sales information, and the listing or delisting of brands carried in state stores.

The administrator, who is involved in the day-to-day administration of the monopoly, could be delegated responsibility for interim purchasing. He could periodically report and justify his decisions to the Board, which in turn could establish general policy. It might be desirable to require written proposals from distillery representatives submitted in advance of meetings to allow the administrator time to evaluate the proposals and formulate recommendations to the Board. This procedure would not only delineate the policy function of the Board and the administrative function of the administrator, but it would provide a two-step process which should effect better control and closer scrutiny over liquor purchases.

Transportation

Liquor transportation costs, varying from a high of $702,000 in 1957 to a low of $469,000 in 1962, are a substantial expense. Liquor traffic is also a major source of income to the transportation companies serving Montana, and particularly those serving Helena.

INBOUND FREIGHT

More than 95 percent of inbound traffic is hauled by railroads due largely to the location of the distilleries, existing railroad lines, and lower rates. Although there are wineries and rectifying plants west of the Mississippi, most major distilleries are located to the east. There have been shifts in the share of total traffic handled by the Northern Pacific and Great Northern railroads, but these two carriers haul most inbound traffic.

Most liquor is received in carload lots. Freight rates vary according to total weight of the shipment—lower rates being applied to heavier loads. There is, therefore, a freight rate from each shipping point for 30,000 pound shipments, 40,000 pound shipments, and so forth. There are also special rates quoted on "trailer" cars for wine. The Board might receive one carload weighing 64,000 pounds, and a "trailer" with 30,000 pounds. The 64,000 pound rate would apply to both cars. In addition, there are "overflow" rates for distilled spirit shipments over a specified weight. For example, a 40,000 pound rate might be $2.50. If the car contained 70,000 pounds, the $2.50 rate would apply to the first 40,000 pounds and a lower rate would apply to additional 30,000 pounds.

The Board does not use actual freight costs in computing the retail price of liquor. Because whiskey is received almost exclusively from three areas (Boston—New York—Phila-

[2] Liquor Publications, Inc., *The Control State Review,* (November, 1963) p. 19 ff.

delphia, Kentucky, and Illinois) the Board has arbitrarily divided the nation into two geographic areas (eastern and central) and administratively determined the freight cost per case used for pricing merchandise from each area.

Although the freight cost per case from each geographic area used for pricing is called "average freight cost," the term is a misnomer. Tne artificial cost distinguishes between an eastern and central zone, but it does not reflect different actual freight costs from points within those two broad areas.[3] Nor does it reflect acurately the different actual freight costs for individual shipments.

The Board was unable to supply the mathematical factors used to compute artificial freight costs, but the former administrator stated that it was intended to: (1) eliminate frequent price changes by leveling fluctuating freight costs, (2) produce sufficient revenue to cover anticipated increased freight costs, and (3) simplify the pricing formula.

The Board collects an estimated $600,000 annually in freight charges through the application of their pricing formula. Actual costs are $475-500,000. The state, therefore realizes an estimated net profit of $100-125,000 annually as a result of using artificial freight costs for pricing (excluding the effect of the markup percentage and excise taxes).[4]

The Board has complete discretion in setting the markup percentage — thus controlling profits to the state. A net profit built into artificial freight charges not only obscures the markup rate, but also makes unit costing practically impossible and inflates the inventory figures (cost of liquor delivered in Helena is inflated because artificial rather than actual freight costs are used to compute cost of inventory).

According to the Board, the use of artificial rather than actual freight costs for pricing could also change the retail price as much as fifteen cents per unit. The Council concludes use of actual freight costs, or an average from each shipping point, would be more equitable to shippers. In the absence of compelling reasons to discriminate among shippers, the Board should not deny a competitive advantage to those from which freight costs are low. Distilleries and distributors select locations for various reasons — one of which is proximity to markets. If the firm already has an advantage in a given market area, there is no clear reason why the Board should grant an additional advantage in another marketing area.

The Council recognizes that liquor prices in state stores must be uniform and that rapid changes to reflect changing freight costs would be complicated and expensive. Although it might not be feasible to use actual freight costs for pricing each shipment, computation of an average yearly cost from each shipping point would probably not be costly nor complicated. At the very least, the disparity that now exists could be reduced by dividing the country into more zones. Using a more refined average freight cost would also tend to correct the inaccurate cost data now used by the Board.

Transportation costs have always been of major importance to producers and consumers in Montana because of its somewhat isolated location. Freight rates are a complex and controversial issue, and the Board has simply added another confusing factor.

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[3] Actual freight costs for 40,000 pound shipments vary from $2.25 to $3.14 per hundred pounds for points in the central zone, but the same artificial costs are used for pricing.

[4] Estimated income based upon case sales for the year ending June 30, 1963 and the lowest artificial costs used for pricing.

OUTBOUND FREIGHT[5]

Practically all outbound liquor shipments move by truck, some of which are owned by railroads. On September 20, 1962 the Board ruled that 90 percent of outbound traffic would be carried by non-railroad carriers. This ruling caused a sharp decline in outbound shipments handled by railroad-owned trucks and a compensating increase in the non-railroad portion of outbound shipments during late 1962—early 1963. In June of 1962 railroad-owned trucks were hauling 75 percent of outbound shipments; for the period January through March, 1963 this figure dropped to 15 percent.

When asked why the shift was made, one Board member said "progress and service mainly." Another said the Board "felt that the trucking companies who were not subsidized by the railroads were entitled to more business." It was also stated that the shift was intended to equalize outbound freight revenue because most incoming shipments moved by railroad. One Board member said that non-railroad trucks had provided very good service and the Board "had much less breakage in the handling of merchandise since we made the change."

After the shift was made, however, the Board discovered that non-railroad trucks did not provide equal service at equal prices in all instances. As a result, some of the traffic originally diverted from railroad-owned trucks was restored. Now, the stated policy of the administrator is that service and cost are the two major criteria, with business going to non-railroad trucks when service and cost are equal. This policy, however, is in conflict with the September, 1962 edict issued by the Board. By mid-1963 railroad-owned trucks were carrying 41 percent of outbound freight.

Although the Board generally agrees that freight should be equalized among the various carriers, there is no real consensus among the members. The reasons justifying the policy change are ambiguous and even conflicting in some instances.

The Board has little discretion in allocating inbound shipments. Due to the location of the distilleries and wineries and transportation available, economic factors dictate that most inbound shipments move by railroad transportation. On the other hand, almost all outbound shipments move by highway transportation. Contrary to a statement by one Board member that generally there is little choice between railroad and non-railroad owned trucks, of the 153 retail store locations in Montana 19 are served only by non-railroad owned trucks and 26 are served only by railroad-owned trucks. The stores served only by one carrier, however, are located in areas of sparse population and the annual freight revenue on outbound shipments to points served by only one carrier amounts to about $25,000—15 percent of total outbound freight. Freight revenue to points served only by railroad-owned trucks and those served only by non-railroad owned trucks is almost equal—about 7.5 percent of total for each. The Board has discretion in allocating the remaining outbound shipments—85 percent in terms of freight revenue. Because the Board could not shift 7.5 percent of outbound traffic from railroad-owned trucks, the decision to allocate 90 percent of outbound traffic to non-railroad trucks represents almost the maximum amount (92.5 percent) that could be allocated to this transportation segment.

The Board was obviously ill informed when it decided to allocate 90 percent of the outbound freight to non-railroad owned trucks. The time and money wasted as a result of this interference with an administrative matter cannot be estimated, but the swing from 75 percent to 15 percent to 41 percent of traffic hauled by railroad-owned trucks in less than one year disrupted the Board's traffic department and unnecessarily inconvenienced many common carriers.

[5] All transportation figures based on freight revenue.

The Economics of the Monopoly

The Montana Legislative Assembly had practically no control over funds of the Board until 1963. The only direct appropriation of money prior to 1963 was $100,000 for the establishment of liquor stores made by the extraordinary session of 1933-34. Since that time, the legislature has generally appropriated as much money as necessary to administer the liquor control laws.

The lack of legislative control over Board funds was clearly pointed out in 1943 when the Supreme Court ruled that funds of the Board were outside the state treasury until declared "net revenues and receipts" and transferred to the general fund. This ruling applied only to liquor profits, all tax and license moneys being deposited immediately in the treasury.

In 1962 the Council recommended that the Board's trust and agency account be replaced by two accounts, one in the revolving fund for purchase of liquor, and one in the earmarked revenue fund for administrative expenses. The recommendation was adopted by the 1963 legislature, and the following amounts from the earmarked revenue fund were appropriated for the current biennium:

	Fiscal 1964	Fiscal 1965
Personal Services	$1,450,000	$1,500,000
Operations and Capital	689,157	728,208
TOTALS	$2,139,157	$2,228,208

This changed policy gives the legislature budgetary control over the board for the first time since the monopoly was established.

Since 1933, the state has received more than $140 million from the operation of the liquor monopoly. The sources, and total revenue are shown below.

Revenue Source	Revenue 1933 through June 30, 1963
Liquor profits from the state markup on retail liquor and individual permits	$68,800,941
Liquor licenses. Rate based upon population. In towns of 2,000 or less, $200 per annum; in towns of more than 2,000 but less than 5,000, $300 per annum; in towns of more than 5,000 but less than 10,000, $450 per annum; in towns of more than 10,000, $600 per annum; for each railway system, $300 per annum; special 24 hour permits, $10 per day	12,727,482
Beer department. Licenses are: brewer, $500 per annum; wholesaler, $400 per annum; brewer storage, $400 per annum; retailer, $200 per annum; veterans' club, $50 per annum; common carrier, $25 per annum; fair association, $10 per day, $25 minimum; special 24 hour permits, $5 per day. Beer tax, $1.50 per barrel of 31 gallons	19,890,647
State excise tax	35,022,041
County license tax	3,874,559
	$140,315,670

As noted above, taxes and license fees collected by the board are paid directly into the general fund. Liquor profits, or operational markup, are not available for expenditure until declared net profits by the board and transferred to the general fund.

Probably because revenues from the monopoly are usually quoted in total figures, it is erroneously believed that the major source of revenue is from liquor sales. However, of total revenue of $8 million during the fiscal year ended June 30, 1963, profit from liquor sales was $2.896 million — about 35 percent of total income. State excise taxes were nearly equal ($2.782 million), beer license fees and taxes amounted to $1.114 million, and liquor license fees amounted to $538,450. When figures of more than $8 million in income are used, therefore, a number of other revenue sources besides profit from liquor sales are included. Statements that abolition of the monopoly would cost the state $8 million in annual revenue are misleading and untrue. Net profit from the operation of the monopoly is less than $3 million annually.

Operation of state package liquor stores results in a substantial cost to the Board. During fiscal 1963, revenue from liquor sales was $17.4 million, gross profit was $4.8 million, operating expenses of the liquor department were $1.9 million, and net profit from sales was slightly under $2.9 million. Of the $1.9 million in expenses of the liquor department, about $1.5 million (almost 80 percent) was incurred by state package stores.

The Board does not segregate net profit from liquor sales in the annual report. Since 1933, net profit from sales and individual liquor permits are about $69 million. Highest profit was earned during fiscal 1957 ($3.805 million); during the past five fiscal years net profit has remained at about $2.8 million per year. Net profit from sales has also declined as a percentage of total income during the past six years.

The percentage of total revenue for the past ten years received from various revenue sources is shown below:

LIQUOR CONTROL BOARD REVENUE
Fiscal Year 1954-1963

SOURCE	FISCAL YEARS ENDING JUNE 30									
	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
Sales & Permits	53.1	53.7	53.4	56.2	40.7	41.4	36.7	36.1	36.8	36.1
State Excise Tax	23.4	23.1	23.5	23.4	24.2	28.7	34.1	34.3	34.3	34.7
County Taxes	None	None	None	None	10.2	9.6	8.5	8.6	8.6	8.7
Beer Licenses & Taxes	14.0	13.9	13.9	12.3	15.1	12.6	13.7	14.1	13.7	13.9
Liquor Licenses	9.5	9.3	9.2	8.0	9.8	7.3	7.0	6.9	6.6	6.7
TOTALS	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

SOURCE: Montana Liquor Control Board, *Annual Report, July 1, 1962 through June 30, 1963*, p. 11.

During the fiscal year ending June 30, 1963, the Board received $538,450 from sale of liquor licenses, $456,055 from sale of beer licenses, and $49,168 from sale of individual permits. Total revenue from licensing activities was about $1,044,000. The Board does not segregate costs of licensing and law enforcement activities. Salaries of inspectors and clerical help amount to about $65,000 per year. Other costs include printing and distributing licenses, the salary of the assistant administrator for that part of his time devoted to licensing and law enforcement, costs involved in board consideration of applications, and law enforcement costs other than salaries. It might be estimated that licenses return a net profit in excess of $950,000 per year to the general fund of the state.

Revenues from the liquor monopoly, by source, and the distribution of net profits to the general fund 1933 through June 30, 1963 are shown in the following table.

REVENUE OF LIQUOR CONTROL BOARD AND TRANSFERS TO THE STATE GENERAL FUND, 1933 THROUGH 1963

Year	Total Income	State Excise Tax a	County License Tax a	Beer Licenses & Tax a	Liquor Licenses a	Liquor Profits b	Liquor Profits Deposited in General Fund b
1934	$ 722,215	$	$	$	$	$ 722,215	$ 10,000
1935	1,134,387	....	....	....	....	1,134,387	1,000,000
1936	1,552,478	....	....	....	....	1,552,478	1,400,000
1937	2,834,414	375,426	....	524,807	245,450	1,688,732	1,405,000
1938	2,578,315	428,924	....	495,000	279,600	1,374,791	1,500,522
1939	2,636,437	479,002	....	493,000	299,990	1,364,445	1,508,979
1940	2,690,639	519,988	....	502,300	267,115	1,401,236	1,305,000
1941	2,940,938	573,999	....	516,700	319,865	1,530,374	1,400,000
1942	3,542,678	737,320	....	496,022	314,863	1,994,473	1,500,000
1943	3,665,044	781,107	....	481,487	356,999	2,045,451	1,200,000
1944	3,953,058	951,170	....	638,078	511,200	1,852,610	611,741
1945	3,801,266	1,034,461	....	564,966	387,300	1,814,539	650,000
1946	5,358,713	1,359,984	....	629,027	468,150	2,901,552	2,000,000
1947	5,042,426	1,191,561	....	763,372	565,600	2,521,893	2,000,000
1948	5,194,936	1,215,013	....	761,362	545,000	2,673,561	5,000,000
1949	2,693,473	566,293	....	475,666	439,300	1,212,214	1,250,000
1949-50	4,884,763	1,148,422	....	741,727	520,900	2,473,714	3,500,000
1950-51	5,821,443	1,305,770	....	851,839	598,800	3,065,034	2,500,000
1951-52	5,653,427	1,292,681	....	861,472	659,400	2,839,874	2,800,000
1952-53	5,802,253	1,405,061	....	809,840	566,300	3,020,552	3,000,000
1953-54	5,869,017	1,371,135	....	820,016	559,900	3,117,966	3,250,000
1954-55	5,900,174	1,363,723	....	821,794	549,600	3,165,057	2,750,000
1955-56	5,973,318	1,402,695	....	829,239	550,500	3,190,884	3,250,000
1956-57	6,766,313	1,583,738	....	833,276	543,850	3,805,449	3,000,000
1957-58	5,493,313	1,328,856	561,876	827,273	537,450	2,237,858	3,000,000
1958-59	6,819,966	1,960,242	651,316	857,859	530,000	2,820,549	2,750,000
1959-60	7,544,310	2,573,515	643,379	1,032,889	527,100	2,767,427	2,750,000
1960-61	7,602,961	2,606,733	651,683	1,075,787	526,900	2,741,858	3,000,000
1961-62	7,817,338	2,683,587	670,897	1,071,684	517,400	2,873,770	3,500,000
1962-63	8,025,760	2,781,637	695,409	1,114,264	538,450	2,896,000	3,000,000
TOTALS	$140,315,670	$ 35,022,041	$ 3,874,559	$ 19,890,647	$ 12,727,482	$ 68,800,941c	$ 65,791,242c

a. Deposited immediately in the state treasury.
b. Deposits from liquor profits (including sale of individual permits) transferred to the general fund at the Board's discretion.
c. Difference between profits and deposits in the general fund are retained earnings of the Board.
SOURCE: Derived from Montana Liquor Control Board, *Annual Report, July 1, 1962 through June 30, 1963*, pp. 10-11.

Chapter IV
PERSONNEL

General authority over personnel is delegated to the Board by statute. "The Board shall choose one (1) of its own members as chairman, and shall appoint a state liquor administrator, who shall not be a member of the Board and who shall be ex-officio the secretary of the Board. The Board may also, in its discretion, appoint an assistant liquor administrator and other employees. . ."[1] The Board also has authority to delegate personnel duties to the administrator including ". . . the power to hire and discharge employees of the board, subject, however, to such regulations and restrictions as the board may impose. . ."[2]

Employment, Separation, Compensation, and Number of Employees

EMPLOYMENT

Political patronage is a major consideration in employment of Board personnel. Although the Board has authority over all personnel by statute, in practice the administrator is named by the Governor, vendors are employed upon the recommendation of the county central committee of the Governor's political party, and inspectors or auditors are employed upon the recommendation of the state central committee.

According to the Board, "Employment of personnel is based upon experience and ability first. If the person can meet these requirements, it is discussed with the central committee involved and a recommendation is asked for from this committee. This generally concerns people in the upper echelon of employment."[3]

Information on a prospective employee is collected on a "rather informal" application form, which is endorsed by the local political central committee reflecting the politics of the Governor. The Board, however, reserves the right to finally approve and to dismiss the employee if he is not competent. Members of the Board stressed that a change of administration did not always result in a complete turnover of state vendors. In some small commission stores, the vendor is employed with little regard to political affiliation. If the local central committee does not recommend a change, the Board generally does not remove the vendor upon a change of administration.

Other employees of state stores are usually hired upon the vendor's recommendation. Employment of part-time personnel is largely at the discretion of the vendor, but permission must be secured from the central office. Commission stores are allowed extra help only for annual or sick leave of the commission vendor.

Employees of the central warehouse and administrative offices in Helena, with the exception of the administrator, inspectors and auditors, are generally excluded from the patronage system. Although the Board reserves the right to approve the selection of all personnel, selection of central office employees is largely at the administrator's discretion. In practice, there has been little turnover in central office employees when the administration has changed.

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[1] Section 4-106, R.C.M. 1947.

[2] Section 4-107, R.C.M. 1947.

[3] Correspondence, Mr. Crowell B. Shelton to Mr. Eugene C. Tidball, June 21, 1963.

SEPARATION

Dismissal of employees is at the Board's discretion although they may act upon the recommendation of the administrator and vendors. Dismissal may be the result of a reduction in force, for misconduct, or for incompetence. Employment is on a month to month basis.

During a 1963 reduction in force, the Board initially determined which stores would reduce their working force, interviewed vendors and solicited their opinions, and reached a final decision based upon this information. Presumably the vendors' opinion is requested before an employee is dismissed, but the Board could discharge an employee without consulting the vendor.

Unless dismissed for mishandling funds or other serious reasons, employees involuntarily separated are given two weeks salary as severance pay. A member of the Board said this payment was made in lieu of the regular two weeks notice and is "the usual thing in private business." The practice was further explained as a method of immediately getting rid of an employee who "isn't performing" and "isn't doing the job." However, this explanation is inconsistent with at least one instance where the Board paid a separated employee two weeks severance pay and then continued to pay him a salary as an advisor. There is no legal requirement that state employees be given two weeks notice before separation.

Following his retirement early in 1963, the former administrator was retained by the Board in an advisory capacity for six months at a salary of $500 per month to be paid in advance—a total retainer of $3,000. The former administrator was also paid for unused leave, and received two weeks severance pay. Members of the Board said this was a "special case," intended to take advantage of the former administrator's experience during the first six months under a new administrator. The former administrator said he completed several store location jobs pending, and also consulted with employees during the time he was retained. During the six month period, however, he was incapacitated for "a couple of months" and could not perform any duties.

COMPENSATION

Salaries of employees are set by the Board, but a statutory limit is imposed. Stores are classified by law as Class A (annual gross sales volume of $450,000 or more), Class B (gross sales of $140,000 to $450,000), Class C (gross sales of less than $140,000). If annual gross sales are less than $25,000, it is the policy of the Board to employ the vendor on a commission basis—usually ten percent of gross sales. Maximum annual salaries range from $3,750 for an employee of a Class C store other than the vendor to $9,000 for the liquor administrator.

Maximum Salaries of Liquor Board Employees, 1933-63

Position	1933 a	1937 b	1947 c	1949 d	1951 e	1957 f	1963 g
State Adm.	$3,600	$5,000	$5,400	$5,400	$6,000	$7,000	$9,000
Ass't. Adm.	....	4,000	4,500	4,500	5,000	5,600	7,200
Supv. of Accounting	....	....	4,500	4,500	5,000	5,500	6,600
Supv. of Data Processing	....	....	....	....	4,200	4,900	6,600
Lic. Dept. Supv	....	....	....	....	....	....	6,600
Warehouse Supv.	....	....	....	....	....	....	6,600
Purchasing Agent	....	....	....	....	....	....	5,760
Traffic Mgr.	....	....	....	....	....	....	5,760
Ass't Supv. of Data Processing	....	....	....	....	....	....	5,760
Ass't Supv. of Accounting	....	....	....	....	....	....	5,760
Store Auditors	....	....	....	....	....	....	5,760
Field Inspectors	....	....	....	....	....	....	5,760
Class A Vendor	....	....	3,600	3,900	4,200	4,700	5,875
Class A Ass't. Vendor	....	....	....	....	....	4,200	5,250
Class A Other Employee	....	....	2,500	3,000	3,300	3,960	4,950
Class B Vendor	....	....	3,000	3,300	3,600	4,000	5,000
Class B Other Employee	....	....	2,300	2,700	3,000	3,300	4,125
Class C Vendor	....	....	2,500	3,000	3,300	3,600	4,500
Class C Other Employee	....	....	2,100	2,500	2,800	3,000	3,750
Chief Inspector	....	....	....	4,200	....	....	....
Any Other Employee	....	3,000	3,600	3,600	3,900	4,800	6,000

a. Chapter 105, Laws of 1933
b. Chapter 30, Laws of 1937
c. Chapter 243, Laws of 1947
d. Chapter 140, Laws of 1949
e. Chapter 183, Laws of 1951
f. Chapter 235, Laws of 1957
g. Chapter 151, Laws of 1963

Part-time employees receive $15.00 per day. Commission vendors receive 10 percent of gross sales. The actual percentage paid is discretionary with the Board, as is the classification of a particular store as a commission agency. Gross sales of stores are examined periodically, and a decision made on whether or not the store should be on a commission basis. Commission vendors may not receive more than $235 per month, or $2,820 per year.[4]

There is no provision for over-time pay. In an emergency, employees may work more than eight hours per day or more than forty hours per week upon the approval of their immediate supervisor. When over-time is worked, compensatory time off is allowed.

Fringe benefits, such as annual leave, paid holidays and retirement are almost identical to those of other state agencies.

[4] This limit does not apply to commission stores operated on air bases near Great Falls (fiscal 1964 commission $16,413) and near Glasgow (fiscal 1964 commission $9,453). Regular commission vendors receive ten percent of gross sales (amounts include state and local taxes). Commission vendors on military bases receive nine percent of gross sales volume after deduction of state and local taxes.

NUMBER OF EMPLOYEES

There are 303 regular employees of the Liquor Control Board including 52 employees of the central administrative office and warehouse, 4 field auditors, one burglar alarm inspector, 9 field inspectors, 196 salaried employees of state package liquor stores, and 41 commission vendors.

The number of store employees is based partially upon the annual dollar volume of sales. During the fiscal year ending June 30, 1962, the number of employees in Class A stores (annual gross sales volume in excess of $450,000) varied from three at Bozeman, Havre and Kalispell, to seven each at two Great Falls stores and the store at Missoula. The annual gross sales volume per employee varied from a low of $113,215 at Anaconda to a high of $262,711 at Billings store number four.

The annual dollar sales volume per employee is not, however, the best indication of workload because of variations in portions of total sales to retail licensees (a substantial amount in case lots) and to individuals in single units. During the fiscal year ending June 30, 1962, Billings store number four had gross sales of $1,050,844 of which 91.34 percent was to retail licensees. During that same period, Anaconda had gross sales of $566,074 of which 58.13 percent was to retail licensees. Although gross sales per employee were much higher at Billings store number four, the workload per employee was probably less than at Anaconda because of the larger portion of total sales in Billings to retail licensees in case lots. In fiscal 1963, 61.4 percent of all state store sales were to retail licensees.

The Board appears to have recognized that gross dollar sales is not the most meaningful measure of workload; as early as 1956 it began compiling percentages of sales to licensees and to individuals. Information on sales on the basis of units and case lots, however, is not available nor has the workload relationship between unit sales and case lots been determined. Lacking this information, decisions on the number of store employees are usually made on an individual basis, determined in part upon gross sales per employee modified by the percentage of total sales to retail licensees and to individuals.

Personnel Practices in Other States

There are eighteen public jurisdictions in the nation having liquor monopolies, including seventeen states and one county (Montgomery County, Maryland). Of those eighteen, ten select employees under a merit system. Of the ten which select employees based upon merit, seven grant tenure to employees. In Alabama, Michigan, and Pennsylvania, employees are not granted tenure. The term "tenure," however, may be defined in a variety of ways, and there may be little more job security in a state granting tenure than in a state not granting tenure.

Salaries of employees are set by administrative action in most control states — either by the control board or the personnel department. Five states set salaries by statute (Maine, Montana, Ohio, Vermont, and Virginia). There is no apparent relationship between the existence of a merit system and the manner in which salaries are set. For example, three states which have merit employees set salaries by statute, and two states which do not have merit employees set salaries by statute.

Conclusions and Recommendations

EMPLOYMENT

A major objective of this study was to determine the desirability of continuing the patronage method of selecting employees. The resolution requesting the study noted that the patronage system mitigates against obtaining skilled personnel because of the uncertain tenure, that the possibility of discharge upon a change in political administration might result

in the state being forced to pay higher salaries if qualified persons are to be obtained, and that the patronage system violates a principle of good government that persons below the policy making level should not be politically appointed.

When questioned about the operation of the patronage system and the desirability of selecting employees under a merit system, several members of the Board said the patronage system works quite well in practice, but they did not indicate strong opposition to employment based on merit. There is no real consensus in the Board; two members indicated they had no opinion on patronage as opposed to merit selection of employees. Board members have not expressed dissatisfaction with the patronage system, and there seems to be no compelling reasons to establish a special merit system for Liquor Board employees.

STATUTORY SALARY LIMITATIONS

Board members did indicate they would favor removal of the present statutory salary limits. Some members said that at times there was a need for certain specific skills, but that the rigidity of the statutory salary limits makes employment of such persons difficult.

The statutory salary limits apparently were designed to control salary expenditures. At the time the law was first enacted, funds of the Board remained outside the appropriating authority of the legislature. With almost no control over total salary expenditures, it is not surprising that the legislature imposed statutory salary limitations.

Since July 1, 1963, legislative control over funds of the Board has been exercised through the appropriating process—a much better assurance of fiscal responsibility than statutory salary limitations. The legislative assembly is assured that the amount appropriated represents the maximum which may be expended for salaries. Even when the maximum salary for a particular employee is set by statute the total salary expenditure by an agency is not limited because there is no restriction on the number of employees.

Because of the enhanced opportunity for legislative control over salary expenditures since 1963, it appears that the major reason for setting salaries of Board employees by statute no longer exists. Stipulated statutory salaries introduce a degree of inflexibility into administration of the monopoly which might well be uneconomical to the state. The Council recommends removal of statutory salary limitations for Board employees.

SEPARATION

The Council recognizes that instances arise when it might be desirable to retain a retiring administrative official to provide continuity during the first month or two under a new administrator. This practice is not, however, common in other agencies of state government although the problems arising from a change of administration are equally severe in many cases. The liquor control Board, being an agency of state government, should conform to normal practices of other agencies. If the Board feels that continuity in administration is necessary, it should, if possible, provide for training a subordinate staff employee. If this is not practical, retention of the retiring administrator for several weeks could be justified. Because payments were ordered by the Board to be made in advance, and in light of other circumstances surrounding the incident mentioned on page 20, it is difficult to escape the conclusion that the Board intended to provide a bonus to a long time employee.

Severance pay to employees may be a common practice in private business and industry. The liquor monopoly is not a private business, however, and should be operated as an agency of state government. Severance pay to employees is not common in state agencies, and it should not be paid to employees of the Board without specific authorization from the legislative assembly. It is unquestionably desirable to provide two weeks notice to employees who are separated for reasons other than their own misconduct. However, there is no logic in firing an employee and then rewarding him with two weeks pay from the taxpayers' pocket. If a separation has its origin in budgetary or other administrative changes, a minimum amount of foresight and planning will permit an orderly, normal notice and separation procedure.

Chapter V

THE LIQUOR CONTROL BOARD AND ITS POLICY-MAKING FUNCTION

Purpose of the Liquor Control Act

The Liquor Control Board, and perhaps the legislative assembly and general public as well, seems to have a schismatic attitude toward the liquor monopoly. Income to the general fund is relished by legislator and taxpayer alike; but as one Board member put it, the product "has connotations of evil." One member said that there is possibly a "conflict of interests" in the sale of liquor on the one hand, and the control function on the other.

The merchandising policy of the Board is ambivalent. For example, the Board established an attractive state liquor store in Billings to test public acceptance of modern merchandising techniques. A particular goal was a store that "would be attractive to all types of customers, particularly the women." An advertising firm was employed to advise the Board on window decorations and the display of merchandise. Although they discovered that the new Billings store increased sales of higher priced brands of liquor, a similar store was established in Great Falls. It is not clear whether the Board will continue in this direction. The former chairman said the Board definitely should not promote the sale of liquor; yet there is a policy of renovating state stores to make them more attractive. One member also implied that if the Board determined that the new type of store would actually increase consumption of alcoholic beverages, this fact would influence their future policy on establishing such stores. The equivocal position of the Board is perhaps best expressed in the statement of one member that "Every once in a while we get off on the angle that maybe we should do a little merchandising and wonder whether or not it is a good thing."

The Board has also discussed self-service type liquor stores, but has not finally decided whether or not such stores should be established in Montana, possibly due in part to the feeling of some members that they should not promote liquor sales. Other control states, however, have utilized various modern merchandising techniques. Vermont began a major modernizing program for state stores about ten years ago. Washington has adopted a variety of approaches to merchandising including drive-in stores, one self-service store, and establishment of almost twice as many commission agencies as regular state liquor stores. West Virginia has begun to standardize all interiors of state stores, and Iowa has established six self-service stores. In Ohio the state's Little Hoover Commission urged operation of more self-service stores because they can be controlled and operated at the lowest cost when selling above average volume. In summary, other control states apparently do not feel as restricted in merchandising as the Board in Montana.

A major reason for the ambiguous position of the Board lies with its concept of "control." Apparently, the Board regards a thirty-year old Montana Supreme Court opinion as an important guideline. In *State v. Driscoll*[1] the liquor control law was challenged on a number of grounds, one of which was that it was a revenue measure introduced in the senate and therefore unconstitutional. In answering this contention, the Court said: "Such profit as may be obtained from the conduct of state liquor stores is incidental to the main purpose of the act to limit and regulate the manufacture and sale of intoxicating liquors." Courts will always presume that a legislative act is valid and resolve all doubts in favor of constitutionality. Thus the finding of the Court that the *main* purpose of the act was to limit and

[1] 101 Mont. 348.

regulate the manufacture and sale of intoxicating liquors obviously does not preclude the existence of another important purpose—the raising of revenue. Furthermore, there is nothing in the opinion or the law indicating that controlling the *rate* of consumption of liquor is a purpose of the act; it is the manner in which liquor is manufactured and sold that is to be regulated. A critical question appears to be: Can the state control the rate of consumption of alcoholic beverages by statute and regulation?

A detailed study of the relationship of alcoholic beverage control laws to problems associated with alcohol was recently conducted by the Center of Alcoholic Studies at Rutgers University for the Moreland Commission of the state of New York. Upon completion of this study, the Commission concluded that New York liquor control laws and its control system have had no demonstrable effect on the direct problems of alcohol or on the rate of consumption of alcoholic beverages. The conclusions drawn were:

> *Although it is the basic assumption of most American states that the control of sales and sellers minimizes the consumption rate of alcohol and the direct problems of alcohol, there are almost no studies of the actual effects of these controls in any American jurisdiction. Despite the inadequacy of existing data for definitive answers, the material collected through the field survey and the interpretation gained from the qualified professional scholars in charge were uniform, consistent and powerful in their implications. . . A comparison of these drunkenness arrest figures with the number of outlets for distilled spirits in each of the seven largest cities studied, reveals that no relationship obtains between the number of outlets and the proportion of drunkenness arrests to all other arrests . . . Analysis of the figures on arrests for driving while intoxicated and for rates of alcoholism in the various communities studied, reinforces a conclusion that laws dealing with sales, sellers and selling are above all irrelevant to the solution of the major problems of alcohol . . . It appears, then, that whether a state has a monopoly or a license system of liquor control is of little or no importance in determining the rate of arrests for driving while intoxicated which prevails in a given area. . . The most crucial variable in determining whether or not a defined area will have a high or low rate of alcoholism appears to be the level of industrialization prevailing in the area. Industrialized areas have higher alcoholism rates than rural and agrarian areas. Whether a state is a monopoly or a license state and whether it permits or prohibits on-premise sales of alcoholic beverages apparently has little effect on the number of alcoholics living in that state. . . Whether a state is a monopoly or a license state has no apparent bearing on the number of first admissions to mental hospitals for alcohol problems. Neither do the number of distilled spirit outlets in a state have any demonstrable connection with the number of first admissions to mental hospitals.*[2]

These conclusions and opinions, if correct, point toward a need to clarify the major functions of the Liquor Control Board. If the rate of consumption of alcoholic beverages cannot be controlled by statute and regulatory bodies, it should be frankly recognized. A clarification of the control function to include only regulating the manner in which alcoholic beverages are manufactured and sold within the state—prohibition of sales to minors, enforcement of closing hours, and the like — might aid the Board substantially in resolving any conflicts envisaged between its control and merchandising functions. This simplification, in turn, should expedite the formation of policy decisions and lead to more uniformity in the interpretation and application of liquor control laws. The Council suggests that the legislature recognize the dual function of the Board and perhaps redefine the purposes of the monopoly to better direct it.

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[2] New York State Moreland Commission on the Alcoholic Beverage Control Law, *Study Paper No. 1, The Relationship of the Alcoholic Beverage Control Law and the Problems of Alcohol,* (1963) p. 53-56.

Merchandising techniques must be adapted to local conditions. Because of the wide variance in sales volume and other factors, it is not feasible to reduce merchandising policy to hard and fast rules. The public does, however, have a right to demand that the state maintain stores which are attractive, convenient and which offer a reasonable selection. The Board should carefully review the scope of its control function, define policy on merchandising methods, and explore every possibility of providing adequate service at the lowest operating cost to the state.

Organizational Structure

The liquor monopoly is concerned with two broad program areas — merchandising, and licensing and law enforcement. Although the administrator is responsible for supervising the entire operation, in practice most of his time is devoted to the merchandising program. The assistant administrator devotes almost all of his time to licensing and law enforcement. Reflecting this sharp division of administrative duties, the assistant administrator acts as secretary to the Board during the portion of meetings devoted to licensing and law enforcement, and the official minutes pertaining to licensing and law enforcement are prepared by him and the Board counsel. The administrator acts as a secretary to the Board during the portion of the meeting devoted to merchandising and internal administrative matters.

It would be virtually impossible for the administrator to supervise the merchandising function and also devote any substantial amount of time to licensing and law enforcement matters. Because supervision of the licensing and law enforcement program occupies nearly the entire time of the assistant administrator, he is left little opportunity to become conversant with merchandising. In effect, the monopoly has two administrators, and no single person exercising effective supervision over the entire operation. The division in administrative responsibility results in a lack of coordination and continuity—particularly in the merchandising program. The assistant administrator is a career employee, but the administrator serves at the pleasure of the board and in practice is named by the governor. An analysis of the Board's staffing pattern reveals a need for more high echelon employees.

Official Minutes and Reports of the Board

Official minutes of Board meetings are extremely sketchy. For example, in some instances the minutes contain no record of appearances by persons who met with the Board for 20 or 30 minutes. The subject of Glacier View wine, a marketing innovation which involved years of controversy and sales of many thousands of dollars, is covered by only five brief entries which give no indication as to why the program was initiated or discontinued. No stenographer is present, nor are the meetings recorded by mechanical means. Each agency of state government must maintain internal records to meet its own unique needs. However, by any standards, the official minutes of the Board are insufficient for a public agency which collects annual gross revenue of about $8 million.

Inadequate biennial reports have resulted in a lack of communication between the board and the Legislative Assembly. Board members have mentioned, for example, that needed skilled employees cannot be hired because of statutory salary rates, and that individual liquor permits should be abolished. Neither request has been formally communicated to the Legislative Assembly through annual reports of the Board, although Section 4-227, R.C.M. 1947 requires that Board reports contain "general information and remarks as to the working of the law within the state. . ." The Council recommends that the Board utilize its annual reports to communicate requests and recommendations to the Legislative Assembly.

Glacier View Wine

The purchase of dessert wine bottled specially for the Board under the name "Glacier View" during the period September, 1958 through August, 1962 generated criticism from the general public and the legislature. This wine was purchased from Regina Grape Products (formerly Poco Mas Winery, and Ellena Brothers) of Etiwanda, California.

The five brief references to Glacier View contained in the official minutes of the Board, summarized below, give no clue as to the reason for the program.

1. On April 25, 1958 the administrator was instructed to call for bids for a one year supply of dessert wine (the call did not indicate amounts to be furnished, but the bid sheet indicates 65,000 cases of one-fifth gallon units and 25,000 cases of one-half gallon units).
2. On June 10, 1958 several persons called on the Board to discuss this invitation for bids.
3. On June 11, 1958 bids were opened, and all were rejected.
4. On June 13, 1958 a special meeting was held in Billings and the offer of Ellena Brothers was accepted.
5. On November 21, 1958 a bill from Ellena Brothers for services in registering the Glacier View wine label in the amount of $102.43 was approved for payment.

Correspondence files of the Board, which consist mostly of handwritten memoranda and notes, are sketchy, adding little to the information contained in the minutes. Standard business records such as purchase orders, invoices, freight bills, and receiving reports are maintained. Because there are so few written records pertaining to the Glacier View wine transaction, it can be assumed that most business was handled verbally.

According to members who were serving at the time, the Board concluded early in 1958 that some wineries were basing their prices on the retail price in monopoly states rather than manufacturing costs. The Board felt that if bids on dessert wine were requested, this wine could be purchased at a lower price and the alleged "price conspiracy" broken.

In April of 1958 bids were requested for a one year supply of dessert wine. In June of 1958 bids were opened. According to Board members, the similarity of bids reflected the intent of the wine industry to maintain a standard price regardless of manufacturing costs—except for the bid submitted by Ellena Brothers. Bids on one-fifth gallon units ranged from a low of $4.60 per case (Ellena Brothers) to a high of $5.88 per case, and on one-half gallon units from a low of $5.57 (Ellena Brothers) to a high of $6.36 per case.

The Board felt that the bids—except for the price quoted by Ellena Brothers — were so similar that any differences in wholesale price would be equalized through application of the pricing formula. Applying the pricing formula, however, retail prices would have varied from $0.85 to $1.10 per one-fifth gallon unit, and one bid submitted would have resulted in a retail price of only five cents more than the Ellena bid. All bids were rejected at the June 11, 1958 meeting due to the belief that they would result in virtually identical retail prices. The Board asked Mr. John Ellena to meet with them on June 13, 1958 in Billings.

At the Billings meeting, the Board determined that the retail selling price should be at least fifteen cents below that of any other dessert wine to justify the purchase. When presented with this decision, according to the Board, Mr. Ellena agreed to lower his wholesale price if the Board would waive the requirement that each bottle of liquor sold in the state have the decalcomania, or Montana seal, attached at the winery. The Board agreed to use a private label in lieu of the regular Montana seal—or perhaps only agreed to waive the use of the Montana seal.

It then became necessary to amend Board regulation 2-3 to permit the use of a private label in lieu of the state seal. Regulation 2-3 was amended on November 21, 1958 by the addition of the following:

> . . . provided, however, that said official stamp shall not be required to be affixed to bottles of any liquor bottled for distribution exclusively by the Montana Liquor Control Board and bearing thereon an official label adopted by, and registered in the name of, said board and with respect to such liquor said official label shall be in lieu of said official stamp.

Because Glacier View wine was first supplied to state stores on September 1, 1958, the amendment was an *ex post facto* authorization; the Board had operated contrary to its own regulations for almost three months. Nor did the private label afford the same control provided by serially numbered seals. Some twenty years ago, following the theft of about 3,000 seals, the numbering system was started.

Although Board members involved feel that marketing Glacier View wine was beneficial both to the state and to the public, the label was discontinued in August of 1962 due in part to adverse criticism. Since that time, the Board has marketed two different wines under the same listing of "Special" in state stores. One of these wines is supplied by Regina Grape Products at the same price at which Glacier View wine was sold to the Board. The second wine, supplied by a different winery, is purchased at the same price as was Glacier View.

Although no factual information has been disclosed to show that a conspiracy existed, the Board suspected a price conspiracy and this was the major reason for purchasing the wine on bid. If such an agreement did exist among the wineries, apparently it was not recognized by the other monopoly state control boards.

As noted above, the Board agreed to waive the requirement that the Montana seal be attached to each bottle when a price was negotiated with Mr. John Ellena. Because attachment of the seal increases costs, the modified requirements permitted a lower bid. In other words, the specifications were revised to permit lower costs to the bidder—a procedure which normally warrants issuing new specifications and calling for new bids. The Board did not, however, call for new bids.

The Board has stated that it was interested in purchasing wine at the lowest possible price. Yet, during the five year period that Glacier View was marketed, no calls for bids were issued after the initial advertisement. During that period, the cost of Glacier View wine increased substantially, but apparently prices were adjusted after consultation with the single winery involved.

Official minutes of the Board do not indicate why the Glacier View label was dropped, but members have attributed the discontinuation chiefly to adverse public reaction. Official records give no indication of opposition, however, and the actual extent of the adverse reaction is not known.

Although Board members think that merchandising Glacier View wine was profitable, the additional net revenue cannot be ascertained since the effect upon total wine sales is not known, and the impact on sales of competing brands of wine has not been measured. In short, the profitability of the program is a matter of opinion which has not been substantiated.

If the explanation of the reasons for marketing this wine is correct, a full and frank disclosure of the facts would have answered much of the criticism. Some Board members feel that the criticism was unjustified—as it may have been. However, the Board did not explain its action, and responsibility for not revealing the facts must lie with the Board.

Because there cannot be good control over liquor marketed unless each unit has attached to it a serially numbered seal, the Council recommends that statutes be amended to require that a serially numbered seal of standard design be attached to each unit of alcoholic beverage marketed in the state.

Receipt and Distribution of Merchandise

WINE VINEGAR AND COOKING SHERRY

During the past five years, small quantities of wine vinegar and cooking sherry have been included in carload shipments of wine from Regina Grape Products. The vinegar and sherry shipments are prepaid, and are picked up at the loading dock by a transfer company which notifies a local brokerage firm. The brokerage firm acts for Regina Grape Products

Company in wholesaling this merchandise to grocery stores. According to the Board, the arrangement was made with Regina for the mutual benefit of both parties. By including these shipments in carloads of wine consigned to the Board, Regina takes advantage of lower carload rates. The former administrator authorized this arrangement based on the belief that the state would benefit because the total weight of shipments could be increased and hence a lower freight rate would apply.

When asked to provide examples of cost savings, the Board found that of 22 shipments only two affected freight costs. One had resulted in a loss of $5.35 and one had resulted in a savings of $60.90. The loss of $5.35 was, however, due to an incorrect freight rate; because Regina pays that portion of total freight costs attributable to the wine vinegar, if the proper freight rates are applied the inclusion of these shipments cannot increase freight costs to the State of Montana.

There is a difference between this practice and the use of metropolitan car pools for less-than-carload shipments. Under the car pool arrangement, merchandise is delivered to a freight broker. The broker, in his discretion, includes the shipment in a car with a number of similar small shipments to take advantage of lower carload rates. After the merchandise has been delivered to the broker, the Board has no discretion in determining other merchandise included in the carload shipment. However, the Board does have discretion in allowing the inclusion of cooking sherry and wine vinegar in carload shipments received from a particular point. The arrangement with Regina required special authorization, and granted a concession to a particular winery dealing with the Board.

The Council recommends that the practice of including wine vinegar and cooking sherry in carload shipments be discontinued. This recommendation should not, however, be construed as disapproval of using metropolitan car pools where a freight broker has authorization for pooling shipments to obtain lower rates, nor as disapproval of cooperating with other public agencies in pooling shipments.

WAREHOUSE WITHDRAWALS

On at least one occasion, wine was withdrawn from the warehouse and furnished to a conference. According to the Board, this was the only occasion when it arranged for furnishing liquor to a conference, which was regarded as a "special case." In this instance, a winery supplied the liquor and the Board apparently billed the winery at wholesale cost (including federal tax) plus freight charges. The Montana markup and taxes were not included; consequently the state received no revenue from the transaction. Section 4-150, R.C.M. 1947 provides: "No person shall have or keep any liquor within the state which has not been purchased from a state vendor of the Montana Liquor Board or from a druggist authorized to sell the same," with the exception that a person may bring into the state one wine gallon of liquor not purchased from a state store. It appears that the persons attending the conference who were in possession of the liquor violated the law. A deliberate act of the Liquor Control Board, which is responsible for enforcing the liquor control act, permitted this violation.

In two other known instances wine was withdrawn by representatives of wineries because it was defective. The Board has no set policy regarding the disposition of defective merchandise withdrawn from sale. The Council suggests that the Board formulate a fixed written policy on the disposition of defective liquor withdrawn from the warehouse. Shipping defective merchandise directly back to distilleries would provide better control than delivery to distillery representatives in Helena.

SAMPLES

Samples of liquor are given to the Board by distillery representatives. The Board stated by letter that the amount received for sampling purposes may vary from 3 to 9 units per monthly meeting. During a joint meeting with a council subcommittee, however, one Board

member estimated that between ten and twenty-five cases per year were received. Other evidence indicates that about four cases are received each month. Most samples are received express prepaid consigned to the distillery representative. No official written records of the amount of samples received are maintained.

Because samples of a single brand sometimes arrive in quantities of two cases, it is apparent that even the intent of providing a mere sample is not present. Section 4-153 provides in part "No person selling or offering for sale to, or purchasing liquor from, the state or the board, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the board or to any employee of the state, or to anyone on behalf of such member or employee." Certainly an element of the gift is present in the large quantities of liquor received by the Board each month. If the Board feels that samples are necessary to their function, they should maintain a written record of such liquor received.

The Council recommends that the law be amended requiring a written record of samples received, from whom supplied, and the final disposition of any such liquor.

Relationship of the Board to the Governor

At the present time the relationship of the Board to the Governor is vague and ill-defined. The Governor is consulted at times on policy matters, but the appointive Board is technically independent of the chief executive due to the fixed term of office for members. Members must be confirmed by the senate and can be removed only for cause.

A former chairman of the Board stated that the Governor does not direct the policy of the Board and that none of the three governors that he had served under had ever tried "to interject their ideas on the liquor board." However, in commenting on Glacier View wine, another member said "Actually the governor came in and said there's so much criticism of this private label, will you stop it, and we stopped it."

Although the Governor's personal relationship with some or all of the members may enable him to influence Board policy, the fixed term of office and stringent requirements for removal of members has the practical effect of removing any legal responsibility to the Governor. While this may have been desirable when the Board was largely concerned with control of liquor sales, the emergence of the monopoly as an important source of revenue has increased the need for some control by the chief budgeting official. Recognition of this need is reflected in the fact that although the Board is authorized to employ the administrator, in practice he has been named by the Governor for many years in Montana. If the Governor cannot exert effective control over Board policies, there is little assurance that the Board will respond to wishes of the public.

General Conclusions

The Liquor Control Board has displayed some weakness in policy making. A major reason for this weakness appears to be the Board's preoccupation with aspects of the monopoly which are essentially administrative in nature. Concentrating on detailed aspects of the monopoly, the Board has often neglected its primary function — policy formulation. The Board is responsible for administration of the monopoly, but it should assert itself into the administration only to the extent necessary to insure that policies are effectively implemented.

There is a tendency for the Board to attempt to operate the monopoly much like a private business. This is evident in the policy of severance pay to employees, the dealings with Ellena Brothers to obtain Glacier View wine, inclusion of wine vinegar and cooking sherry in carload shipments of wine, prepayment of travel expenses to employees, and other actions. The former chairman stated: ". . . it could well be that we have operated this thing on a

basis comparable to how we operated a business of our own. . ." Although the monopoly is a major source of state revenue and a number of business principles are clearly applicable to the merchandising function, the monopoly is not a private business. It should be operated like the public agency it is with business procedures being applied as necessary to the successful merchandising of liquor.

The Council's liquor control subcommittee also observed that the Board's counsel often expresses his views on other than legal matters. Depending upon the Board for his retainer, a special counsel might be more interested in defending the actions of individual Board members than impartially interpreting the statutes. The possibility of a conflict of interest also exists if an attorney must advise a board on whether or not to initiate or pursue court action if that attorney is paid an additional fee (as is the case presently) for court appearances. These observations on Board counsel might apply with equal validity to a number of other agencies of state government which operate on dedicated revenue.

During the past three fiscal years, the retainer for legal counsel has amounted to between five and seven thousand dollars annually, which suggests that there is enough legal work to justify assignment of an assistant attorney general to the Board. Such an arrangement would create a desirable liaison between the law enforcement activities of the Board and the Attorney General's office and would provide the necessary legal counsel from an attorney who would not have a vested interest in defending actions of the Board.

The efficiency of management and operation of the monopoly is difficult to measure. During interviews with the Board, members repeatedly emphasized the large amount of revenue realized from the monopoly. However, whether operation of the monopoly in the past has been good, fair, or poor, is difficult to ascertain. As was stated above, this study did not entail a complete fiscal audit of the financial records of the monopoly. A periodic audit in greater depth than the examination of the State Examiner would be desirable.